

**Appln No. 09/775,315**  
**Am dt date November 24, 2006**  
**Reply to Office action of August 24, 2006**

**REMARKS/ARGUMENTS**

In the Final Rejection dated August 24, 2006, the examiner maintained the rejection of claim 11 under 35 U.S.C. § 103(a) as allegedly obvious over Mayer (U.S. Patent No. 5,873,333). In response, applicant has amended claim 11 to recite that the lithium manganese oxides and the lithium nickel cobalt oxides remain distinct chemical species. Mayer fails to teach or suggest such a feature. Rather, Mayer discloses the use of a compound having the formula  $\text{Li}_x\text{Ni}_y\text{Co}_z\text{MnO}_2$  formed by the chemical *reaction* of a specified lithium containing compound with a specified metal containing compound, a specified cobalt containing compound and a specified nickel containing compound. Column 11, lines 36-50. As such, Mayer fails to disclose that the lithium manganese oxides and the lithium nickel cobalt oxides remain distinct chemical species, as recited in amended independent claim 11, and claim 11 is therefore allowable over Mayer.

In addition, the examiner maintained the rejection of claims 1-4 under 35 U.S.C. § 103(a) as allegedly obvious over Pynenburg, et al. (U.S. Patent No. 5,429,890) in view of Hasegawa, et al. (U.S. Patent No. 5,370,948). In maintaining this rejection, the examiner asserts that the Declaration under 37 C.F.R. § 1.132 filed on December 1, 2005 is insufficient to overcome this rejection because "the comparative examples are based on a  $\text{Li}_{0.98}\text{Ni}_{0.82}\text{Co}_{0.18}\text{O}_2$  compound and not a  $\text{LiNiMn}_2\text{O}_4$  compound as otherwise taught by the prior art." Office action, page 4. However, applicant notes that the Comparative Examples referenced in that Declaration are intended to address the rejection of claim 11, and not the rejection of claims 1-4. However, the Declaration, at paragraphs 2 through 5, does address the rejection of claims 1-4. According to the experimental results noted in those paragraphs of the Declaration, mixtures of  $\text{LiMnO}_2$  and  $\text{Li}_{1.03}\text{Ni}_{0.8}\text{Mn}_{0.2}\text{O}_2$  in a weight ratio of less than 1 exhibit unexpected and desirable results compared to mixtures of the same oxides in a weight ratio of greater than 1. Therefore, applicant submits that the Declaration filed December 1, 2005 is sufficient to overcome the rejection of claims 1-4.

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In maintaining the rejection of claims 1-4, the examiner also argues that applicant's assertion that the cited references do not teach the claimed combination of oxides is insufficient to defeat the obviousness rejection. However, applicant's argument regarding these references is not strictly that the references fail to teach the claimed combination of oxides, but also that the references fail to teach or suggest the use of the claimed combination of oxides within the claimed weight ratio range. As noted above, providing the claimed combination of oxides within the claimed weight ratio range exhibits unexpected and desirable results. Accordingly, applicant submits that claims 1-4 are allowable over Pynenburg and Hasegawa.

Claims 1-4 and 11 remain pending in this application. By this amendment, applicant has amended claim 11 to place that claim in condition for allowance. The amendments find full support in the original specification, claims and drawings. No new matter is presented. In view of the above amendments and remarks, applicant submits that all of pending claims 1-4 and 11 are in condition for allowance. Applicant therefore respectfully requests a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, applicant invites the examiner to contact applicant's counsel at the number indicated below.

Respectfully submitted,  
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